

Community Development Financial Institutions Fund

§ 1807.104

Subpart D—Qualification as Affordable Housing

- 1807.400 Affordable Housing—General.
- 1807.401 Affordable Housing—Rental Housing.
- 1807.402 Affordable Housing—Homeownership.

Subpart E—Leveraging and Commitment Requirement.

- 1807.500 Leveraged costs—general.
- 1807.501 Commitment for use.
- 1807.502 Assistance limits.
- 1807.503 Projection completion.

Subpart F—Tracking Requirements

- 1807.600 Tracking funds—general.
- 1807.601 Nature of funds.

Subpart G—Applications for Assistance

- 1807.700 Notice of Funds Availability.

Subpart H—Evaluation and Selection of Applications

- 1807.800 Evaluation and selection—general.
- 1807.801 Evaluation of Applications.

Subpart I—Terms and Conditions of Assistance

- 1807.900 Assistance Agreement.
- 1807.901 Disbursement of funds.
- 1807.902 Data collection and reporting.
- 1807.903 Compliance with government requirements.
- 1807.904 Lobbying restrictions.
- 1807.905 Criminal provisions.
- 1807.906 CDFI Fund deemed not to control.
- 1807.907 Limitation on liability.
- 1807.908 Fraud, waste and abuse.

AUTHORITY: Housing and Economic Recovery Act of 2008, Pub. L. No.110-289, section 1131

SOURCE: 75 FR 75380, Dec. 3, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 1807.100 Purpose.

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities and Community Service Facilities.

§ 1807.101 Summary.

(a) Through the CMF, the CDFI Fund will competitively award grants to

CDFIs and qualified Nonprofit Organizations to leverage dollars for:

(1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and

(2) Financing Economic Development Activities or Community Service Facilities.

(b) The CDFI Fund will select Awardees to receive financial assistance grants through a merit-based, competitive application process. Financial assistance grants that are awarded through the CMF may only be used for eligible uses set forth in subpart C of this part. Each Awardee will enter into an Assistance Agreement which will require it to leverage the CMF grant amount and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1807.102 Relationship to other CDFI Fund programs.

A Certified CDFI will automatically be deemed to meet the eligible entity requirements, provided that it has been in business as an operating entity for a period of at least three years prior to the application deadline.

§ 1807.103 Awardee not instrumentality.

No Awardee shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1807.104 Definitions.

For the purpose of this part:

(a) *Act* means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110-289, section 1131;

(b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, an entity;

(c) *Affordable Housing* means rental or for-sale single-family or multi-family housing that meets the requirements set forth in subpart D of this part;

(d) *Affordable Housing Activities* means the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing;

(e) *Affordable Housing Fund* means a loan, grant or investment fund, managed by the Awardee, whose capital is used to finance Affordable Housing Activities;

(f) *Appropriate Federal Banking Agency* has the same meaning as in section

3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(g) *Applicant* means any entity submitting an application for assistance under this part;

(h) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

(i) *Assistance Agreement* means a formal, written agreement between the CDFI Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(j) *Awardee* means an Applicant selected by the CDFI Fund to receive assistance pursuant to this part;

(k) *Capital Magnet Fund (or CMF)* means the program authorized by section 1131 of the Act, Public Law 110–289, and implemented under this part;

(l) *Certified Community Development Financial Institution (or Certified CDFI)* means an entity that has been determined by the CDFI Fund to meet the eligibility requirements set forth in 12 CFR 1805.201;

(m) *Committed* means that the Awardee is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for use pursuant to §1807.501;

(n) *Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, an office of the U.S. Department of Treasury, established under the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

(o) *Community Service Facility* means the physical structure in which service programs for residents or service programs for the broader community (including, but not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, cultural, and/or social services) operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(p) *Concerted Strategy* means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities or Community Service Facilities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction;

(q) *Control* means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

(r) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(w)(1);

(s) *Development* means land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities;

(t) *Economic Development Activity* means the development, preservation, rehabilitation, or purchase of Community Service Facilities and/or other physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(u) *Eligible-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 120 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(v) *Eligible Project Costs* means Leverage Costs plus those costs funded directly by a CMF award, exclusive of Operations;

(w) *Extremely Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 30 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(x) *Families* means households that reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands) and that meet the criteria set forth in § 1807.104(u), (w), (jj) or (fff);

(y) *HOME Program* means the HOME Investment Partnership Program set forth in the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*;

(z) *Homeownership* means ownership in fee simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership (which shall include cooperative housing and mutual housing project). For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. The ownership interest may be subject only to the following:

(1) Restrictions on resale permitted under the Assistance Agreement;

(2) Mortgages, deeds of trust, or other liens or instruments securing debt on the property; or

(3) Any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

(aa) *Housing* means single- and multi-family residential units, including, but

not limited to, manufactured housing and manufactured housing lots, permanent housing for disabled and/or homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO), as described in 24 CFR 92.258;

(bb) *HUD* means the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3532–3537;

(cc) *In Conjunction With* means physically proximate to Affordable Housing and reasonably available to residents of Affordable Housing. For a Metropolitan Area, In Conjunction With means located within the same census tract or within 2 miles of the Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within 20 miles of the Affordable Housing;

(dd) *Insured CDFI* means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

(ee) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. 1783 *et seq.*;

(ff) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation as determined in 12 U.S.C. 1813(c)(2);

(gg) *Leveraged Costs* means those costs as described in 12 CFR 1807.500;

(hh) *Loan Guarantee* means an agreement to indemnify the holder of a loan all or a portion of the unpaid principal balance in case of default by the borrower;

(ii) *Loan Loss Reserves* means funds that the Applicant or Awardee will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable, or for related purposes that the CDFI Fund deems appropriate;

(jj) *Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 80 percent of area median income; and

(2) In the case of rental housing units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by HUD;

(kk) *Low-Income Area (LIA)* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater;

(ll) *Low Income Housing Tax Credit Program or LIHTC Program* means the program as set forth under Title I of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*;

(mm) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(nn) *Multi-family housing* means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, apartment or townhouse;

(oo) *Non-Metropolitan Area* means an area set forth in the Assistance Agreement;

(pp) *Nonprofit Organization* means any corporation, trust, association, cooperative, or other organization that is:

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State of formation; and

(2) Exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

(qq) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in 12 CFR 1805.200 which is not a Depository Institution

Holding Company, Insured Depository Institution, or Insured Credit Union;

(rr) *Operations* means all allowable expenses as defined by Office of Management and Budget (OMB) Circular A-122, "Cost Principles For Non-Profit Organizations," and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," incurred by the Awardee in the administration, operation, and implementation of a CMF award;

(ss) *Participating Jurisdiction* means a jurisdiction designated by HUD, as a participating jurisdiction under the HOME Program in accordance with the requirements of 24 CFR 92.105;

(tt) *Preservation* means:

(1) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages that, at the time of refinancing, are subject to affordability and use restrictions under State or Federal affordable housing programs, including but not limited to, the HOME Program, the LIHTC Program, the Section 8 Tenant-Based Assistance and the Section 8 Rental Voucher programs (24 CFR part 982), or the Section 515 Rural Rental Housing program (7 CFR part 3560), hereinafter referred to as "similar State or Federal affordable housing programs," where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(2) Activities to refinance and acquire single-family or multi-family properties that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable housing programs, by the former tenants of such properties, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(3) Activities to refinance the mortgages of single-family, owner-occupied housing that at the time of refinancing are subject to affordability and use restrictions under similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(4) Activities to acquire Single-family or Multi-family housing, with or without rehabilitation, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part; or

(5) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part;

(uu) *Project Completion* means that all of the requirements set forth at §1807.503 for a project supported by a CMF award have been met;

(vv) *Purchase* means to provide direct financing to a homeowner to acquire Homeownership through an exchange of money;

(ww) *Rehabilitation* means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of Affordable Housing.

(xx) *Revolving Loan Fund* means a pool of funds managed by the Applicant or Awardee wherein repayments on Affordable Housing Activities loans, Economic Development Activities loans and/or Community Services Facilities loans are used to finance additional loans;

(yy) *Risk-Sharing Loan* means loans for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Applicant or Awardee with other lenders (*e.g.*, participation loans);

(zz) *Service Area* means the geographic area in which the Applicant proposes to use CMF funding, and the geographic area approved by the CDFI Fund in which the Awardee shall use CMF funding as set forth in its Assistance Agreement;

(aaa) *Single-family housing* means a one- to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot;

(bbb) *State* means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Is-

lands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(ccc) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(ddd) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company;

(eee) *Underserved Rural Area* means a Non-Metropolitan Area that:

(1) Qualifies as a Low-Income Area;

(2) Is experiencing housing stress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the last decennial census:

(i) Lacked complete plumbing;

(ii) Lacked complete kitchen;

(iii) Paid 30 percent or more of income for owner costs or rent, or

(iv) Had more than 1 person per room; or

(3) Is remote-rural county consisting of a Non-Metropolitan Area that is also not adjacent to a Metropolitan Area;

(fff) *Very Low-Income* means:

(1) In the case of owner-occupied housing units, income not greater than 50 percent of the area median income; and

(2) In the case of rental housing units, income not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

§ 1807.105 Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the FEDERAL REGISTER.